

## **PROFESSIONAL SERVICES CONTRACT**

**THIS CONTRACT** ("this Contract") is between the State of Indiana acting by and through the Office of the Indiana Attorney General (hereinafter the "State") and Communication Horizons, LLC d/b/a NetLib (hereinafter "Contractor").

**WHEREAS**, the State requires database encryption software for their Unclaimed Property Division information system; and

**WHEREAS**, Contractor has the expertise, know-how and resources to provide the services requested and has been selected by the State to provide such services;

**1. Duties of Contractor.** Contractor shall perform the duties set forth in Contractor's proposal, attached hereto and incorporated herein as **Exhibit A**. Contractor understands that opening individual files on State computers (i.e. Word Documents, Excel Spreadsheets, e-mail, etc.) is not required for this project and, in fact, is expressly prohibited without prior written consent of the State.

**2. Consideration.** The Contractor will be paid fifteen thousand five hundred twenty-five dollars (\$15,525.00) for the encryptionizer for SQL server enterprise and one year of support in a lump sum upon satisfactory completion of all services. Thereafter, yearly support will be paid to the Contractor in the amount of two thousand twenty-five dollars (\$2,025.00) for the term of the Contract. Additional services and products may be needed at a later date and those services and/or products will have to be formally added to the duties of this Contract via an amendment. Total remuneration of this Contract shall not exceed thirty-six thousand dollars (\$36,000.00).

**3. Term.** This Contract shall begin on February 19, 2007 and end on February 18, 2011.

**4. Access to Records.** – DELETED BY MUTUAL AGREEMENT

**5. Assignment; Successors.** Contractor shall not assign or subcontract the whole or any part of this contract without the State's prior written consent. Contractor may assign its right to receive payments to such third parties as Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this contract and shall not be made to more than one party.

**6. Audits.** - DELETED BY MUTUAL AGREEMENT

**7. Authority to Bind Contractor.** Notwithstanding anything in the contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor designated above and has obtained all necessary or applicable approvals from the home office of the Contractor to make this

contract fully binding upon the Contractor when his/her signature is affixed and is not subject to home office acceptance hereto when accepted by the State of Indiana.

**8. Changes in Work.** The Contractor shall not commence any additional work or change the scope of work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

**9. Compliance with Laws.**

A. The Contractor agrees to comply with all applicable and substantive federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this contract shall be reviewed by the State and the Contractor to determine whether the provisions of the contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<[<http://www.in.gov/ethics/>>>](http://www.in.gov/ethics/)>>>. If the contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.

C. The Contractor certifies by entering into this Contract, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Agreement. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

E. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. If and when Contractor performs work on-site in pursuance of Contract, the Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach of the contract and grounds for immediate termination of the Contract and denial of further work with the State.

G. The Contractor hereby affirms that it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. Contractor agrees that the State may confirm, at any time, that no liabilities exist to the State of Indiana, and, if such liabilities are discovered, that State may bar Contractor from contracting with the State in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liability to the State and has submitted proof of such payment to the State.

I. As required by IC 5-22-3-7:

- (1) the Contractor and any principals of the Contractor certify that
  - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of
    - (i) IC 24-4.7 [Telephone Solicitation of Consumers],
    - (ii) IC 24-5-12 [Telephone Solicitations], or
    - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
  - (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor:
  - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
  - (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

**10. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of

the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state, or local law.

**11. Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract, shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

**12. Confidentiality of State Information.**

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) or personal information (as defined in IC 4-1-11-3) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

Attached hereto and incorporated herein by reference as Exhibit B is a copy of Contractor's internal privacy/confidential information policy. Contractor agrees to comply with such internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract.

**13. Conflict of Interest.**

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

B. The State may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.

C. The State will not exercise its right of cancellation under section B, above, if the Contractor gives the State an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The State may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.

D. Contractor has an affirmative obligation under this Contract to disclose to the State when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

**14. Debarment and Suspension.** The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and is solely responsible for any paybacks and or penalties that might arise from non-compliance.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

**16. Disputes.** Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

A. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

B. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**17. Drug-Free Workplace Certification.** The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the Contractor's workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to

as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**19. Funding Cancellation.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**20. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**21. Indemnification.** Contractor agrees to indemnify, defend, and hold harmless the State and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any. The State will not provide such indemnification to the Contractor.

**22. Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

**23. Information Technology Accessibility.** If the Contractor provides any information technology related products or services to the State which interfaces with the State's IT equipment, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any substantive deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

**24. Insurance.**



A. If and when Contractor performs work on-site in pursuance of Contract, the Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

- 1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the State.
- 2) The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative, a certificate of insurance prior to the commencement of this agreement. Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, an "all states endorsement" covering claims occurring outside the state of Indiana if any of the services provided under this agreement involve work outside the state of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- 2) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this contract shall not be limited by the insurance required in this contract.
- 3) The insurance required in this Contract, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.
- 4) Failure to provide insurance as required in this Contract is a material breach of contract entitling the State to immediately terminate this Contract.

C. The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to the commencement of this Contract.

**25. Licensing Standards.** Inasfar as they comply with standard Software Industry practices, the Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, the Contractor shall notify State immediately and the State, at its option, may immediately terminate this Contract.

**26. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

**27. Minority and Women Business Enterprise Compliance.** The Contract agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plan.

**28. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

**29. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to:  
Martin Durand  
Office of the Attorney General  
302 W. Washington Street, IGCS-5<sup>th</sup> Floor  
Indianapolis, IN 46204
- B. Notices to the Contractor shall be sent to:  
Communication Horizons, LLC d/b/a NetLib  
65 High Ridge Road, #428  
Stamford, CT 06905

**30. Payments.** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

**31. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages,

interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

**32. Progress Reports.** The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**33. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**34. Substantial Performance.** - DELETED BY MUTUAL AGREEMENT.

**35. Taxes.** The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**36. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

**37. Termination for Default.** With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part, if the Contractor fails to:

1. Correct or cure any substantive breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other substantive provisions of this Contract.

A. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated. However, the Contractor shall continue the work not terminated.

B. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

C. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**38. Travel.** Expenditures made by the Contractor for travel will be reimbursed by the State at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

**39. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

**40. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and Contractor shall grant such request.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK.**

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

**Communication Horizons, LLC**  
d/b/a NetLib

By: [Signature]  
Printed Name: NEIL WEICHER  
Title: CTO  
Date: 5/7/07

**Office of the Attorney General**

By: [Signature]  
Printed Name: Brent C. Eubrey  
Title: Chief Counsel  
Date: 5-10-07

**Department of Administration**

[Signature] (for)  
Carrie Henderson  
Commissioner  
Date: 6.5.07

**Office of Technology**

[Signature] (for)  
Gerry Weaver  
Chief Information Officer  
Date: 1-Jun-2007

**State Budget Agency**

[Signature] (for)  
Charles Schalkol  
Director  
Date: 6-11-07

**Approved as to Form and Legality:**  
**Office of the Attorney General**

[Signature] (for)  
Stephen Carter  
Attorney General  
Date: 6-14-07

# EXHIBIT A



NetLib, a subsidiary of Communication Horizons LLC  
1177 High Ridge Rd.  
Stamford CT 06905 • USA

Cloud Computing Software



(203) 321-1278 • (800) 480-1604  
fax: (203) 286-1056  
www.netlib.com

Customer # 225716  
Quote # 225716-01g

## PRICE QUOTE

<b>Quote To</b>
Indiana Attorney General's Office
Attn: Martin Durand

Date	Terms	Rep
1/25/2007	2% 10, Net 30	EBS

Qty	Prod No.	Description	Unit Price	Amount
1	20-110-005	Encryptionizer for SQL Server Enterprise – Whole Database Encryption, Multi Proc (up to 4)	\$ 15,000.00	\$ 15,000.00
<b>Subtotal</b>				\$ 15,000.00
1	80-100-010	Discount - Government	10%	\$ (1,500.00)
1	90-920-001	Silver Support - 12 months - 1 Business Day Response on email requests, plus prod updates	15%	\$ 2,025.00
<b>Subtotal</b>				\$ 15,525.00
Sales Tax				
Shipping				
<b>Total</b>				\$ 15,525.00

All amounts are in US Dollars. This price quote is valid until February 25, 2007

**We look forward to your business!**

*OK file  
change to unclassified property  
when work is complete*

Federal Tax ID Number: 06-1469874		
We accept payments by company check, wire transfer or via credit card - Visa, Mastercard, American Express or Discover.		
<b>To Pay via Credit Card.</b> Fax invoice to +1-203-286-1056 in USA with below: Type of Card: MC VISA AMEX DISC Name on Card _____ Card Number _____ Exp Date _____ Security Code _____ Address _____ Signature _____	<b>Make checks in USD payable to:</b>  Communication Horizons 65 High Ridge Rd. #428 Stamford, CT 06905 USA	<b>To make payments via wire transfer:</b>  ABA No. 026009593 Swift Code: bofaus3n Bank of America 1120 Post Road Darien CT 06820 USA  For credit to Account No. 9434266085 Communication Horizons, LLC dba NetLib 65 High Ridge Rd. #428 Stamford, CT 06905 USA

## Exhibit B

The following is extracted from Contractor's internal Non-Discloser Agreement. Please note that Contractor does not expect to come into contact with any confidential information belonging to State.

- **Description of Confidential Information:** For purposes of this Agreement, Confidential Information means any information disclosed, both oral or written, and/or to which Recipient may have access during the Disclosure Period, which is or should be reasonably understood to be confidential or proprietary to Discloser, including, but not limited to, information concerning Discloser's business, products, services, content, finances, subscribers, source code, product designs and plans, customer lists and other marketing and technical information and other unpublished information.
- **Use of Confidential Information:** The Recipient shall make use of or disclose the Confidential Information only in accordance with the provisions of this Agreement and for the purpose of enhancing and furthering business of Discloser.
- **Confidentiality Period:** This Agreement and Recipient's duty to hold Confidential Information in confidence expires three (3) years after termination of business relationship between the parties.
- **Standard of Care:** Recipient shall protect the Confidential Information from disclosure and/or access by any person other than its employees and agents who have a need to know by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized access, dissemination, publication or use of the Confidential Information as Recipient uses to protect its own confidential information of a like nature. Recipient undertakes to promptly notify Discloser, in writing, of any unauthorized access, disclosure or use of the Confidential Information or any other breach of this Agreement Recipient becomes aware of and will cooperate with Discloser to regain possession of the Confidential Information and prevent its further unauthorized access, disclosure or use.
- **Exclusions:** This Agreement imposes no obligation upon Recipient with respect to Confidential Information that: (a) was in Recipient's possession before receipt from Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; (d) is disclosed by Discloser to a third party without a duty of confidentiality on the third party; (e) is independently developed by Recipient; (f) is disclosed under operation of law, except that the Recipient will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed; or (g) is disclosed by Recipient with Discloser's prior written approval.
- **Return of Confidential Information:** At any such time as Discloser may so request, the Recipient will, at its option, either return or destroy all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information).
- **Injunctive Relief:** The Recipient acknowledges that disclosure or use of Confidential Information in violation of the Agreement could cause irreparable harm to the Discloser for which monetary damages may be difficult to ascertain or an inadequate remedy. The Recipient therefore agrees that the Discloser will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this Agreement.
- **Nonwaiver:** Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.